

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2nd Floor  
Boston, MA 02110

October 20, 2004

RE: Cambridge Electric Light Company, Commonwealth Electric Company, Boston Edison Company, NSTAR Gas Company, d/b/a NSTAR, D.T.E 03 – 47-B (Phase II)

Dear Secretary Cottrell:

On October 31, 2003, the Department of Telecommunications and Energy (“Department”) issued an order approving a new reconciling tariff formula to recover costs related to pensions and post-retirement benefits other than pensions (“PBOPs”) for NSTAR in D.T.E. 03-47-B. On December 1, 2003, the Company submitted a compliance filing. The Attorney General responded on December 12, 2003, by pointing out specific defects in the filing and requesting a proceeding to investigate the Company’s pension calculations and assumptions. On October 5, 2004, the Department issued an order of notice requesting comments on the compliance filing by October 20, 2004, and scheduling a procedural conference for October 22, 2004. The Attorney General submits this letter to the Department as his comments.

The Department should reject NSTAR’s compliance filing since the Company has not submitted a sufficiently objective tariff formula to qualify for automatic reconciliation. *Consumers Organization For Fair Energy Equity, Inc. v. D.P.U.*, 368 Mass. 599, 601-03, 608 n. 12 (1975) (discussing reconciling fuel charges); G. L. c. 164, §94 (Department must determine propriety of rate increase after hearing). The Company has not provided a fixed formula with objective elements, but rather seeks approval of a formula with complicated variables that contain a considerable degree of subjectivity in their calculation. *See* M.D.T.E. Nos. 109, 209, 309 and 409. The proposed tariff addresses pension related expenses. It is not the type of actual cost “pass-through” provision operating in terms of a mathematical formula” approved by the Supreme Judicial Court. *Consumers Organization For Fair Energy Equity, Inc. v. D.P.U.*, 368 Mass. at 602. Unlike the Cost of Gas Adjustment Clause (“CGAC”), which passes through actual costs, the Company can produce no bills or invoices for these pension and PBOP costs. NSTAR has not proposed, moreover, nor is it required, to actually pay out this amount of cash into the respective pension trust funds. The Company does not even make the payments for the pension and PBOP benefits, the trust fund does.

The NSTAR pension formula contains inputs that involve subjective and actuarial

judgement,<sup>1</sup> including, but not limited to: 1) the actuarial valuation report used, 2) the selection of the discount rate, 3) the selection of the return on trust fund assets, 4) the selection of a wage base increase factor, 5) the actuarial assumptions included in the underlying actuarial tables, i.e. mortality, disability, etc., used in the related calculations, and 6) the underlying data used to derive the trends in health care, medicare and prescription drug costs. *See* Gotham Affidavit, December 22, 2003. Some of the the inputs also involve calculations, formulas, assumptions, and allocations of the pension and PBOPs costs among the distribution companies and related organizations. *See* Affidavit of Newhard, December 22, 2003. While the NSTAR formula appears to be fixed, it contains far too many complicated and changeable elements to be considered fixed from one reconciliation filing to the next.

For these reasons, the Department should reject NSTAR's compliance filing and new reconciling tariff as too subjective in application. In the alternative, the Department should permit discovery, conduct hearings and allow briefs on all compliance filings submitted pursuant to the tariff prior to approval.

Respectfully submitted,

Alexander J. Cochis  
Assistant Attorney General

cc: Service list

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<sup>1</sup> The Company has also provided insufficient documentation to support these calculations. *See Compliance Response of Attorney General*, p. 1 n.1, December 12, 2003.